

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Cause No. 1:19-cr-0089-JMS-DLP
	)	
SEAN MCNELLYE,	)	
	)	- 01
Defendant.	)	

**REPORT AND RECOMMENDATION**

On March 9, April 11, and 28, 2022, the Court held hearings on the Petitions for Warrant or Summons for Offender Under Supervision filed on February 17, April 8, and 13, 2022.

Defendant McNellye appeared in person with his appointed counsel Michael Donahoe. The government appeared by Abhishek Kambli, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer Travis Buehrer.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant McNellye of his rights and provided him with a copy of the petition. Defendant McNellye orally waived his right to a preliminary hearing.
2. After being placed under oath, Defendant McNellye admitted violation numbers 1, 2, 3, 4, and 5. [Docket Nos. 82, and 93.] Government orally moved to withdraw the remaining violations, which motion was granted by the Court.
3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

**Violation  
Number**

**Nature of Noncompliance**

- 1            **“You must refrain from any unlawful use of a controlled substance.”**

Mr. McNellye submitted urine samples that tested positive for marijuana on June 9, 2021, November 19, 2021, December 20, 2021, February 10, and February 15, 2022. Each test was either confirmed via laboratory testing or through Mr. McNellye's admission.

- 2            **“You shall submit to a substance abuse testing to determine if you have a used a prohibited substance or to determine compliance with substance treatment. Testing may include no more than 8 drug tests per month. You shall not attempt to obstruct or tamper with the testing methods.”**

On December 15, 2021, February 9, and February 14, 2022, Mr. McNellye failed to appear for a random drug screen as instructed by the probation officer.

- 3            **“You shall participate in a substance abuse or alcohol treatment program approved by the probation officer and abide by the rules and regulations of that program.”**

On January 31, 2022, Mr. McNellye failed to appear for his scheduled substance abuse assessment at Take Back Control.

- 4            **“You shall reside at a location approved by the probation officer and shall notify the probation officer at least 72 hours prior to any planned change in place or circumstances of residence or employment (including, but not limited to, changes in who lives there, job positions, job responsibilities). When prior notification is not possible, you shall notify the probation officer within 72 hours of the change.”**

On or about January 1, 2022, Mr. McNellye moved from his home at 10622 Stack Court, Indianapolis, Indiana, and failed to inform the probation office of the change.

- 5            **“You must refrain from any unlawful use of a controlled substance.”**

Mr. McNellye submitted urine samples positive for marijuana on February 22, 2022, February 28, 2022, March 7, 2022 and March 31, 2022. All of which also confirmed positive through laboratory testing or through his

admission of use. The last stated use was March 9, 2022. It should be noted that due to the testing window for marijuana, these tests constitute one (1) additional positive drug screen.

4. The parties stipulated that:

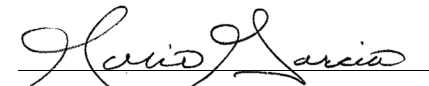
- (a) The highest grade of violation is a Grade C violation.
- (b) Defendant's criminal history category is III.
- (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 5 to 11 months' imprisonment.

5. The parties jointly recommended a sentence of eight (8) months with no supervised release to follow. Defendant requested placement at FCI Terre Haute, satellite camp.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions in the petition, that his supervised release should be revoked, and that he should be sentenced to the custody of the Attorney General or his designee for a period of eight (8) months with no supervised release to follow. The Magistrate Judge will make a recommendation of placement at FCI Terre Haute, satellite camp. The Defendant is to be taken into custody immediately pending the District Judge's action on this Report and Recommendation.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties waived the fourteen-day period to object to the Report and Recommendation.

Date: 4/28/2022

  
Mario Garcia  
United States Magistrate Judge  
Southern District of Indiana

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